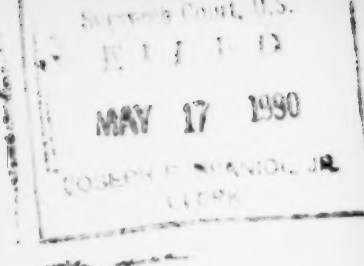


(3)
No. 89-1591



IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1989

Thomas R. Schwarz,
Petitioner,

v.

The Florida Supreme Court, et.al.,
Respondents.

Brief Of Amicus Curiae
In Support of
Petition For Writ of Certiorari
To The Florida Supreme Court

Joseph W. Little
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Admitted January 9, 1979
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INTEREST OF AMICUS CURIAE

This brief of Amicus Curiae is submitted pursuant to Rule 37 in the format denoted by Rule 37.6. It is accompanied by written consents to the filing of the brief provided by the petitioner and respondents pursuant to Rule 37.2.

Amicus Curiae is a member of the Florida Bar and is governed by the rules of the Supreme Court of Florida that are challenged by the petition. Amicus Curiae firmly believes that the individual constitutional rights of no American can be safeguarded if the state courts and legislatures are permitted to limit the first amendment rights of lawyers as a condition of being permitted to earn a livelihood in the field. Toward this end,

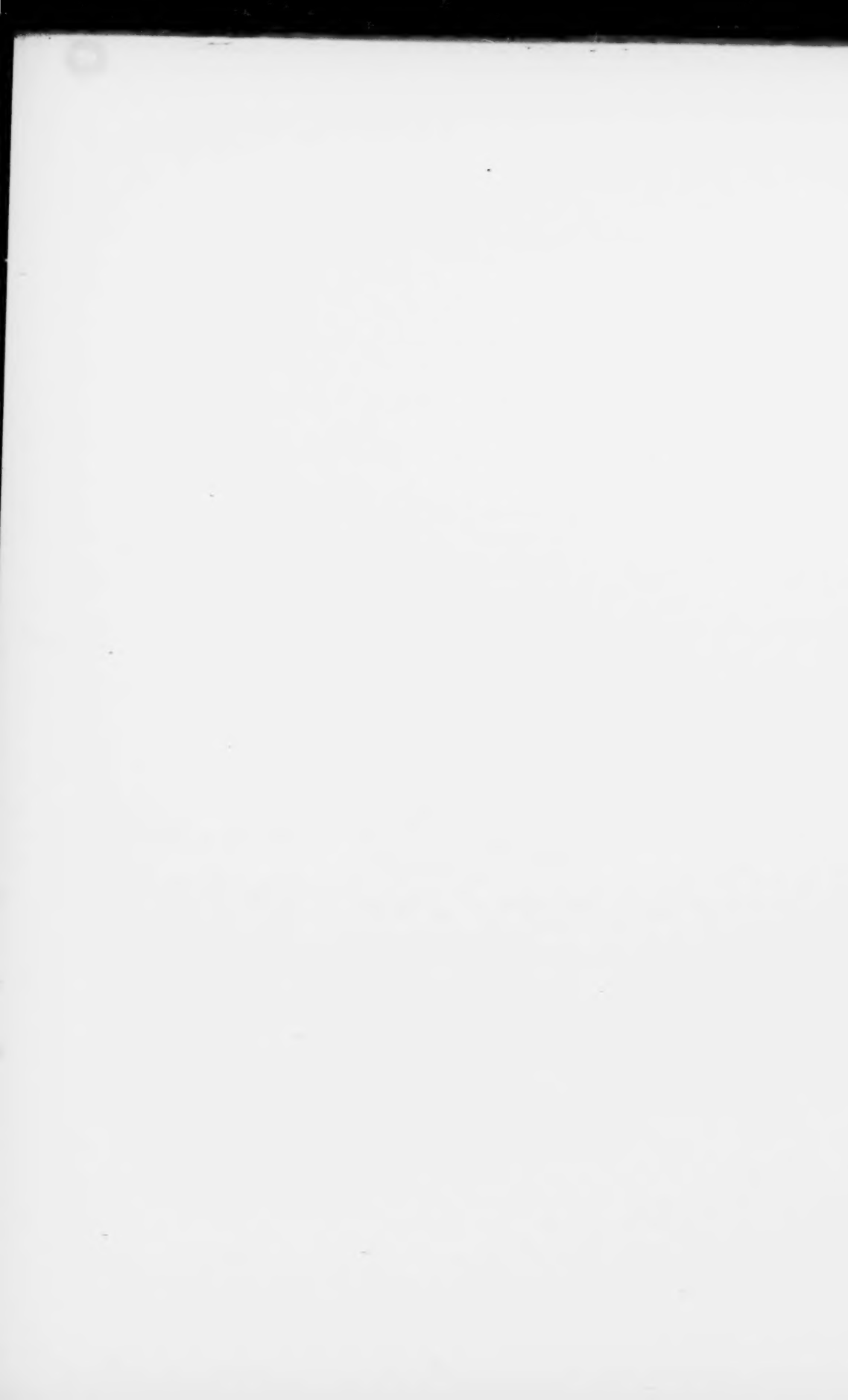
Amicus Curiae was a participant in proceedings below in the Florida Supreme Court and is an Amicus Curiae in Gibson v. Florida Bar, No. 89-3388, a related Florida case now pending in the United States Court of Appeals for the Eleventh Circuit, and in Keller v. State Bar of California, No. 88-1905, a similar case now pending in this Court.

SUMMARY OF ARGUMENT

In addition to the reasons stated in the petition, the decision below violates the first amendment rights of Petitioner and Amicus Curiae in that the procedure prescribed to protect those rights fails to satisfy the minimum requirements of Abood v. Detroit Board of Education, 431 U.S. 209 (1977) and Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986) in four respects:

1. It does not permit dissenters to deduct in advance that portion of the dues that fund the BAR's ideological legislative lobbying activities, but instead employs a constitutionally defective rebate system.

2. It does not permit dissenters to object generally to all the BAR's ideologically



lobbying activities, but instead unconstitutionally requires dissenting members to identify in writing each specific position they dissent to.

3. It does not require the BAR to make a detailed identification of the expenditures it can compel all members to support financially, but instead unconstitutionally requires dissenting members to identify specific positions they object to.

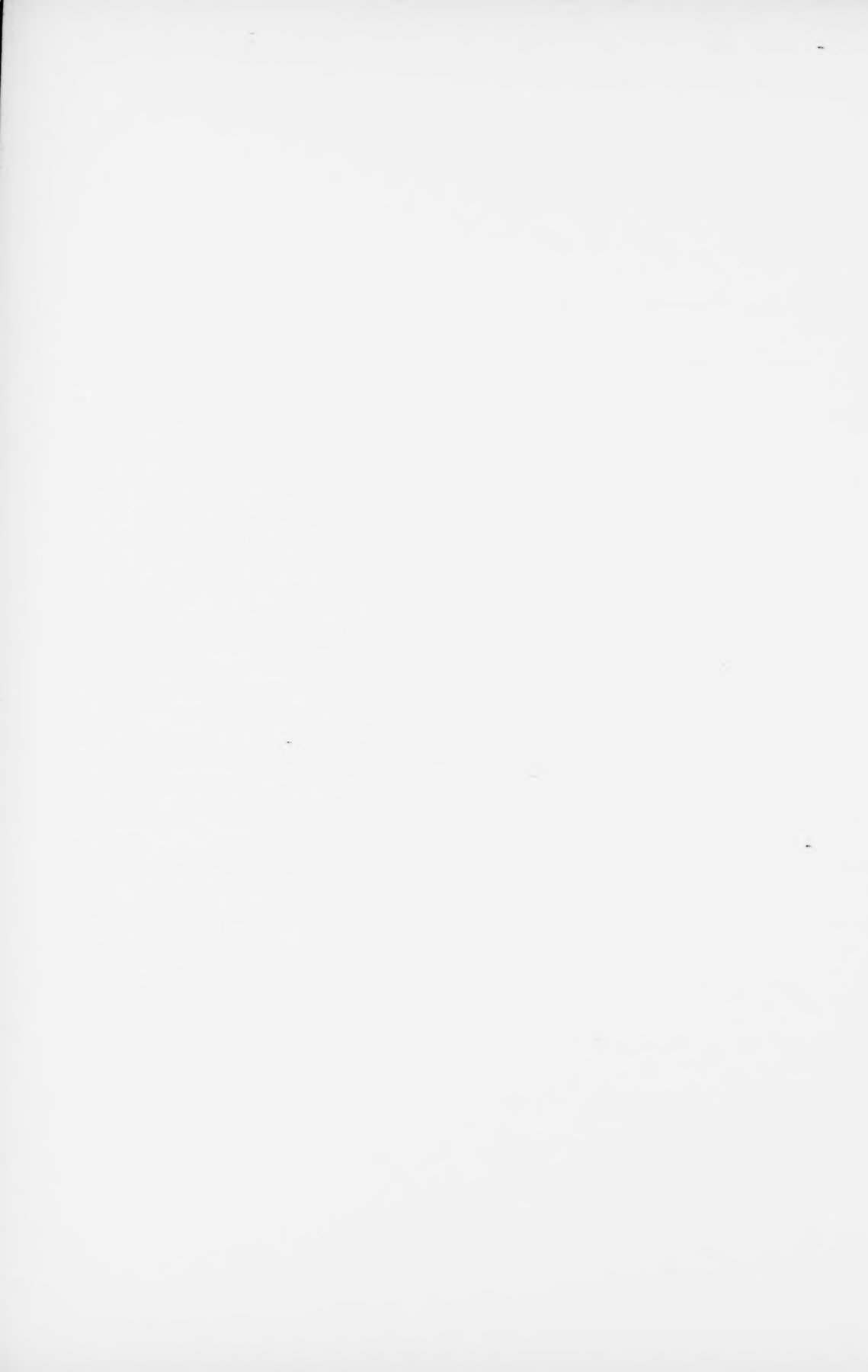
4. It does not provide a reasonably prompt and impartial process to decide the validity of objections of dissenters, but instead imposes an unconstitutional costly and cumbersome process.



ARGUMENT

Amicus Curiae supports the petition for writ of certiorari on the grounds stated by Petitioner Schwarz. In addition, Amicus Curiae asserts that the decision of the Florida Supreme Court from which relief is sought violates the first amendment rights of Petitioner and Amicus Curiae, as those rights have been acknowledged by this Court in Abood v. Detroit Board of Education, 431 U.S. 209 (1977), Chicago Teacher's Union v. Hudson, 475 U.S. 292 (1986) and other cases now under review in Keller.

Specifically, Amicus Curiae asserts that the decision below does not prevent infringement of first amendment rights of members of The Florida Bar who oppose being required to



provide financial support for ideological political lobbying activities of The Bar to which they dissent. Specifically, neither of the two methods for seeking relief prescribed and referred to by the Florida Supreme Court in the decision below satisfies the requirements of Abood and Hudson.

First, the decision below states:

"In any event, we also wish to make clear that any member of The Florida Bar in good standing may question the propriety of any legislative position taken by the Board of Governors by filing a timely petition with this Court." (P.A-59, Petition.)

Amicus Curiae asserts that the decision below provides inadequate guidelines (pp. A-54, 55, Petition) to permit objectors to understand the basis of any decision that the Florida Court might make. Indeed, any petition made pursuant to the language quoted above would

merely be asking the Florida Supreme Court to substitute its judgment for that of the Bar as to what is of "great public interest," what things lawyers are "especially suited" to evaluate, and what subjects affect "the rights of those likely to come into contact with the judicial system." In short, the application of this rule imposes not a "rule of law" but a "rule of men," which runs against one of the deepest traditions of constitutional governance.

Second, the decision below states:

In *The Florida Bar re Amendment to Rule 2-9.3*, 526 So.2d 688 (Fla. 1988), we approved an amendment to the Rules Regulating The Florida Bar to provide the mechanism for a lawyer who objects to legislative positions taken by The Florida Bar to obtain a partial rebate of bar dues. As part of the process, The Florida Bar is required to publish notice of adoption of legislative positions in The Florida Bar News in the issue immediately following the board meeting at which the positions are adopted. In this manner, lawyers

are alerted to the legislative positions being taken by The Florida Bar and by registering their objections they may be relieved of paying for their share of the expense attributable to the advocacy of the legislative positions with which they disagree. Consistent with the response filed by The Florida Bar in this action, we ask the Board of Governors to submit proposed amendments to this rule which will make clear that the Bar carries the burden of proof in such proceedings and providing that the names of objecting bar members, at their option, be kept private.

(pp. A-59, 60, Petition). (Underlining supplied).

This method of relief fails to satisfy the minimum requirements of Abood and Hudson in four respects.

1. It does not permit dissenters to deduct in advance that portion of the dues that fund the BAR's ideological legislative lobbying activities, but instead employs a constitutionally defective rebate system.

2. It does not permit dissenters to object

generally to all the BAR's ideologically lobbying activities, but instead unconstitutionally requires dissenting members to identify in writing each specific position they dissent to.

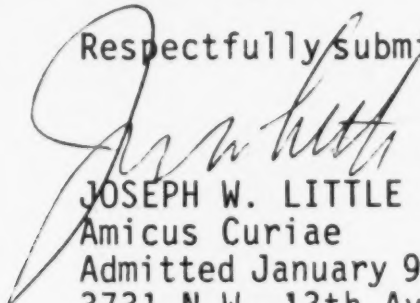
3. It does not require the BAR to make a detailed identification of the expenditures it can compel all members to support financially, but instead unconstitutionally requires dissenting members to identify specific positions they object to.

4. It does not provide a reasonably prompt and impartial process to decide the validity of objections of dissenters, but instead imposes an unconstitutional costly and cumbersome process.

CONCLUSION

In sum, for these additional reasons, Amicus Curiae respectfully urges this Court to grant the petition and the relief sought.

Respectfully Submitted,

 5/15/90

JOSEPH W. LITTLE

Amicus Curiae

Admitted January 9, 1979

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CERTIFICATE OF SERVICE

I certify that copies of this brief were
mailed this ____ day of May 1990 to:

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